

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                                        |   |                        |
|----------------------------------------|---|------------------------|
| BIOVAIL LABORATORIES INTERNATIONAL SRL | ) |                        |
| a corporation of Barbados,             | ) |                        |
|                                        | ) |                        |
| Plaintiff,                             | ) | C.A. Nos. 05-586 (GMS) |
|                                        | ) | 05-730 (GMS)           |
| v.                                     | ) | 06-620 (GMS)           |
|                                        | ) | (CONSOLIDATED)         |
| ANDRX PHARMACEUTICALS, LLC and         | ) |                        |
| ANDRX CORPORATION,                     | ) |                        |
|                                        | ) |                        |
| Defendants.                            | ) |                        |

**FIFTH REVISED SCHEDULING ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 2007, the Court having held teleconferences with the parties to discuss scheduling on January 30 and February 9, 2007, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on May 24, 2007 at 1:00 p.m. The *Markman* hearing is scheduled for a half day with the time shared equally between the parties. On or before March 5, 2007, the parties shall exchange a list of claim terms they believe are in dispute, together with their proposed constructions. On March 14, 2007, the parties shall identify and exchange the materials on which they may rely in support of their constructions. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues on March 16, 2007. On or before March 26, 2007, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The plaintiff shall submit to the court, a Joint Appendix of Intrinsic and Extrinsic Evidence (the "Joint Appendix") containing all intrinsic and extrinsic evidence relied upon in the claim

construction briefing. A sample table of contents of the Joint Appendix can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on March 30, 2007, and answering claim construction briefs on April 24, 2007.

2. **Discovery**. All fact discovery in this case shall be initiated so that it will be completed on or before February 23, 2007. Expert discovery in this case shall be initiated so that it will be completed on or before July 31, 2007. Opening expert reports on issues for which a party bears the burden of proof shall be served on April 9, 2007, with responsive expert reports due on May 9, 2007.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

3. **Summary Judgment Motions**. No summary judgment motions shall be filed in this action.

4. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

5. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

6. **Pretrial Conference.** On September 20, 2007, beginning at 10:00 a.m., the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. **Motions in limine:** No party shall file more than five (5) motions *in limine*. Briefs (**opening, answering and reply**) on all motions *in limine* shall be filed with the pretrial order on August 31, 2007. Motions *in limine* are due on or before August 9, 2007, with oppositions due August 23, 2007 and replies due August 30, 2007. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the court the **joint** proposed final pretrial order with the information required by the form of Final Pretrial Order which can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov) on or before August 31, 2007. The parties may file supplemental

submissions to the Final Pretrial Order in the event that such a need arises.

7. **Trial.** This matter is scheduled for a 5-day bench trial beginning at 9:00 a.m. on October 9, 2007.

8. **Scheduling.** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

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UNITED STATES DISTRICT JUDGE

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